STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 16,329
	)	
Appeal of	)	
	)	

INTRODUCTION

The petitioners appeal a decision of the Office of Home Heating Fuel Assistance with regard to the amount of fuel assistance to be provided to them.

FINDINGS OF FACT

1. The petitioners are an elderly husband and wife whose monthly income is $1,387 derived from each spouse's Social Security check ($491 for the husband and $406 for the wife) and the husband's VA benefits ($490). They live in a two bedroom, two bath single family log home of about 1600 square feet which is heated by electricity. In order to conserve heat, they don't use their upstairs bedroom and bath. Nevertheless, because the home has a cathedral ceiling, their actual heating costs during the winter is $2,254 which is 10.6% of their income. The husband cares for the wife who has dementia and he cannot, therefore, work outside the home. She

lives at home under a Medicaid waiver plan and has twenty-four hour per week nursing care paid for by that program.

2. The petitioners applied for assistance with their fuel in July of 1999 and were found eligible for $280 worth of assistance, $95 to be paid in the first Fall installment and $185 in the later Winter installment. Their eligibility was calculated by deducting a $300 elderly/disability allowance from their income for an allowable net income of $1,087. Their annual heating cost was determined from a proxy table which allowed $1,329 for electric heat in their type of dwelling. That amount was reduced by 34% to reflect the amount which the program could pay toward the total cost that year (66%), since that figure exceded the $500 maximum, the $500 figure was used. That amount was further reduced by another 44% reflecting the amount to be paid for persons at their income level, or $280. The petitioners were notified of their award on November 3, 1999.

3. The petitioners appealed that decision claiming that both of their incomes should not have been included and that the Department had discriminated against them by doing so.

ORDER

The decision of the Office of Home Heating Fuel Assistance is affirmed.

REASONS

The petitioners believe that they have been discriminated against for two reasons: first, that they have been treated differently from unmarried couples who apply for fuel assistance and; second, that the Department's regulations counting the husband's income are inconsistent with state law governing property taxation homestead exemptions which they claim would exclude the husband's income because he cares for his disabled wife.

The petitioners' first contention is without merit. The fuel assistance regulations require that "income for the Fuel Program shall be the combined gross income of all members of the household computed with regard to definitions, disregards, deductions, exclusions and adjustments" in Sections 2904.2-2904.3. W.A.M. 2904. Households include persons who are both related to each other through marriage and persons who are unrelated and live in the same unit unless the latter can show that they are bona fide roomers or boarders who pay rent or provide compensation in the form of caretaker or companionship

services.[1] W.A.M. 2901.2. Spouses and minor children who also provide care to a disabled relative are not allowed under the regulations to claim that they are not household members. W.A.M. § 2901.2 3. (b)(3) and (c)(3). That is because they would presumably live in the same household even if their spouse or parent were not ill or disabled and the care is incidental to the relationship. Although discrimination does exist between family members and non-family members who provide care (in that applicants can show that non-family members are in the household solely as caretakers or companions), the petitioners have not shown that the distinction is impermissible under the law. The Department has a stake in insuring that disabled persons without family members to care for them can hire persons to fulfill that role without having all of the caretaker's income which is not available to them, attributed to them as a resource. If the non-family member is in the household for some other purpose than merely providing care, such as a personal relationship, he or she would also be counted as a member of the household.

[1] If a domestic partnership act is passed in the legislature, domestic partners would undoubtedly also be prohibited from claiming non-household status. It is very unlikely that the Department would cure any existing inequities in the regulations by allowing everyone to claim non-household status. The obvious intent of the regulations is to allow exceptions for persons whose only reason for being in the household is to provide medical or companionship services to disabled persons.

The petitioners' second argument is that the Department's regulations are inconsistent with the provisions of 32 V.S.A. § 6061 et. seq. that govern the definition of household income for purposes of the homestead property tax exemption program. There is nothing in this section that refers to or applies to the Home Heating Fuel Assistance Program. State programs may have different regulations because they may be carrying out different policies and are not necessarily required to be consistent with each other. That being said, it must be pointed out, that the statute cited by the petitioners is actually very much like the fuel assistance regulation in that it provides that "a person residing in a household who is hired as a bona fide employee to provide personal care to a member of the household and who is not related to the person for whom the care is provided shall not be considered to be a member of the household." 33 V.S.A. § 6061(3). Under that statute, the husband's income is not excluded even if he is the caretaker because he is related to the wife. An interpretation of this statute submitted by the Commissioner of the Department of Taxes to the petitioners confirms that the income of a person living in the household may only be excluded if the person residing with the tax claimant is in the household "for the primary purpose of providing attendant

care services (as defined in section 6321 of Title 33) or homemaker or companionship services, with or without compensation, which will allow the claimant to remain in his or her home or avoid institutionalization. . . ." 33 V.S.A. § 6061(5). The Commissioner of Taxes goes on to explain the legislative reason for this wording which could apply equally to the reasoning behind the fuel assistance program:

> The word "primary" [as used above] was specifically included in the statute because the legislature did not intend to have family members already living in the home included in this provision. The assumption is that a spouse is living in the home because of a long and endearing relationship, rather than because of particular needs of the present. The same test would be applied to anyone else regardless of their marital status. . . . The intent of this language in the law was to address the issue of someone moving into a claimant's home to provide services and then having their income change the household income of the claimant.

The petitioners have raised additional concerns regarding the computation of their grant, particularly the use of a proxy table to calculate their electric usage as opposed to the use of their actual consumption. Prior to this year, the Department did use actual amounts but that practice was replaced by regulations adopted in September of 1999, requiring the use of "standard heating cost tables" beginning in the 1999-2000 heating season. W.A.M. 2906.2(b). Those tables set the electric heating cost of a two bedroom single

family home at $1,329 annually. W.A.M. 2906.4. The petitioners' net income of $1,087 puts them at 115-125% of the poverty level.

P-2905 B. At that level, the program will pay 66% of the heating cost up to $500. W.A.M. 2906.3. Tables III and IV. At that point, the benefits of all applicants are reduced by the percentage shortfall of budgeting in the program funding for the year which for 1999-2000 was only sufficient to pay 56% of the total needed benefits. P-2905 E. The petitioners were, thus, found eligible for a $280 benefit. As the Department's calculations were in accord with their regulations and the petitioner has not raised any convincing argument that these methods are illegal, the decision of the Department must be upheld. 3 V.S.A. § 3091(d).

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